CUSTOMER NO.: 24498
Ser. No. 09/830,900
Office Action dated: September 12, 2005
Response dated: December 12, 2005

PATENT
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Remarks/Arguments

Claims 1-34 are pending. Claims 13-21 and 23-31 have been indicated to be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 32-34 have been added to more fully claim the subject matter that applicants regard as their invention. Support for new claims 32-34 is provided, for example, in figures 6a-b and pages 7, line 10 - page 9, line 21. No new matter is believed to be added by the present amendment.

Rejection of claims 1-11 under 35 USC 101

Applicants submit that for the reasons discussed below claims 1-11 are patentable subject matter under 35 USC 101.

As provided in MPEP 2106(IV)(B)(1):

> ... Descriptive material can be characterized as either "functional descriptive material" or "nonfunctional descriptive material." In this context, "functional descriptive material" consists of data structures and computer programs which impart functionality when employed as a computer component. (The definition of "data structure" is "a physical or logical relationship among data elements, designed to support specific data manipulation functions." The New IEEE Standard Dictionary of Electrical and Electronics Terms 308 (5th ed. 1993).) "Nonfunctional descriptive material" includes but is not limited to music, literary works and a compilation or mere arrangement of data.

> Both types of "descriptive material" are nonstatutory when claimed as descriptive material *per se. Warmerdam*, 33 F.3d at 1360, 31 USPQ2d at 1759. When functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized. Compare *In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994) (claim to data structure stored on a computer readable medium that increases computer efficiency held statutory) and *Warmerdam*, 33 F.3d at 1360-61, 31 USPQ2d at 1759 (claim to computer having a specific data structure stored in memory held statutory product-by-process claim) with *Warmerdam*, 33 F.3d at

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1361, 31 USPQ2d at 1760 (claim to a data structure *per se* held nonstatutory). (emphasis added)

Applicants submit that present claims 1-11 are directed to patentable subject matter since they are directed to functional descriptive material recorded on a computer readable medium. The claims are directed to functional descriptive material because the recited data structure enables a particular manner in which a device is able to process the data stored on the data storage element. That is, claim 1 recites control information that enables filtering of the payload data portion on a picture by picture basis without decoding the video data in the plurality of data packets. Such control information provides a functional interrelationship between the data on the storage element and a device that processes the data on the data storage element.

Rejection of claim 1 under 35 USC 102(b) as being anticipated by Miyasaka et al. (US Pat No 5991503)

Applicants submit that for the reasons discussed below present claim 1 is not anticipated under 35 USC 102(b) by Miyasaka.

Present claim 1 recites "... each payload data portion further includes an application header that has control information for allowing the **plurality of data packets in the payload data potion to be filtered** on a picture by picture basis without decoding the video data in the plurality of data packets."

Miyasaka relates to a system for reproducing moving pictures in which only data packets containing particular types of picture data, for example, intra-frame encoded data is read from a storage medium (col. 1, lines 8-12; col. 2, lines 63-67). The portions of Miyasaka cited by the office action describes a process in which packets read from the storage medium are filtered based on the Packet Identification (PID). Specific PIDs are assigned to packets that carry specific type of data, for example, "0005" for sound data, "0007" for user data, and "0003" for picture data (col. 7, line 64 – col. 8, line 4). A PID identifying unit 81 detects the PID of the packet and the data contained in the packet is stored in a relevant one of the buffer memories in response to the detection (col. 10, lines 40-47).

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However, nowhere does Miyasaka disclose or suggest data sectors comprising a control data portion and a payload data portion, **each** of the payload data portions **including a plurality of data packets**, wherein each payload data portion includes an application header that has control information for allowing the plurality of data packets in the payload data portion to be filtered on a picture by picture basis without decoding the video data in the plurality of data packets. In Miyasaka, the filtering is based on a PID associated with each data packet, rather than control information of a payload packet that includes a plurality of data packets.

In view of the above, applicants submit that Miyasaka fails to disclose or suggest a notable feature of present claim 1, and as such, present claim 1 is not anticipated by Miyasaka.

Rejection of claims 12 and 22 under 35 USC 103(a) as being unpatentable over Miyasaka in view of Song (US Pat No 6597860)

Applicants submit that for the reasons discussed below amended claims 12 and 22 are patentably distinguishable over the teachings of Miyasaka and Song.

Claims 12 and 22 have been amended to include the limitation of claim 1 discussed above. That is claim 12 has been amended to recite "...each payload data portion further includes an application header having control information and **the control unit is adapted to filter the plurality of data packets in the payload data portion** on a picture by picture basis without decoding the video data in the plurality of data packets **in response to the control information** in the application header. (emphasis added)" Similarly, claim 22 has been amended to recite the step of "...**filtering the plurality of data packets in the payload data portion** on a picture by picture basis without decoding the video data in the plurality of data packets **in response to the control information** in the application header. (emphasis added).

For the reasons discussed above with respect to claim 1, applicants submit that Miyazaka fails to disclose or suggest the above cited limitations of claims 12 and 22.

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Further, the Office Action acknowledges that Miyasaka fails to teach an encoder for outputting the second bit stream in accordance with the television standard. Song is cited to supply the missing element. However, applicants submit that even assuming arguendo that Song supplies the missing element, Song still fails to cure the defect of Miyasaka as applied to claims 12 and 22. In view of the above, applicants submit that amended claims 12 and 22 are patentably distinguishable over the cited combination of Miyasaka and Song.

Having fully addressed the Examiner's rejections it is believed that, in view of the preceding amendments and remarks, this application stands in condition for allowance. Accordingly then, reconsideration and allowance are respectfully solicited. If, however, the Examiner is of the opinion that such action cannot be taken, the Examiner is invited to contact the applicant's attorney at (609) 734-6815, so that a mutually convenient date and time for a telephonic interview may be scheduled.

Please charge the fee of $350.00 for the addition of 3 new claims, including 1 new independent claim, and any other fees that may be associated with the filing of this response, to Deposit Account No. 07-0832.

Respectfully submitted,

JEFFREY ALLEN COOPER ET AL.

By: _____

Paul P. Kiel
Attorney for Applicants
Registration No. 40,677
(609) 734-6815

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Patent Operations
Thomson Licensing Inc.
P.O. Box 5312
Princeton, NJ 08543-5312

December 12, 2005

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